

Jeffrey C. Matura, State Bar No. 019893
John J. Daller, State Bar No. 034016
BARRETT & MATURA, P.C.
8925 East Pima Center Parkway, Suite 215
Scottsdale, Arizona 85258
Tel: (602) 792-5705
Fax: (602) 792-5710
jmatura@barrettmatura.com
jdaller@barrettmatura.com
Attorneys for Plaintiff NEXA Mortgage, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NEXA MORTGAGE, LLC, an Arizona
limited liability company,

Plaintiff,

v.

SMART MORTGAGE CENTERS, INC.,
an Illinois for-profit corporation; and
WILTON A. PERSON,

Defendants.

Case No. 2:23-cv-00410-SPL

**MOTION FOR EXTENSION OF
TIME TO SERVE DEFENDANT
SMART MORTGAGE CENTERS,
INC.**

(FIRST REQUEST)

The Hon. Steven P. Logan

Pursuant to Fed. R. Civ. P. Rule 4(m), L.R. Civ. 7.3, and this Court's Preliminary Order filed March 9, 2023 [Dkt. 5], Plaintiff NEXA Mortgage, LLC ("NEXA") moves this Court for an Order extending NEXA's time to serve Defendant Smart Mortgage Centers, Inc ("SMC") with the Complaint in this matter for an additional thirty (30) days, up to and including April 20, 2023. NEXA has made good faith attempts to effect service, and this motion is NEXA's first request for an extension of time. A proposed Order is submitted concurrently with this motion for the Court's review and consideration.

The Complaint in this matter was filed on December 21, 2022, in the Superior Court of Arizona, Maricopa County [Dkt. 1-6]. Pursuant to Fed. R. Civ. P. Rule 4(m) and

1 Preliminary Order [Dkt. 5], the current deadline to serve SMC is March 21, 2023.

2 Rule 4(m) states that if a defendant is not timely served within 90 days after filing of
3 the complaint, the court “on motion or on its own after notice to the plaintiff” must either
4 dismiss the action without prejudice or “order that service be made within a specified time.”
5 In addition, upon a showing of good cause for the failure to serve, “the court must extend
6 the time for service for an appropriate period.” The Rule “explicitly provides that the court
7 shall allow additional time if there is good cause for the plaintiff’s failure to effect service
8 in the prescribed 120 [now 90] days, and authorizes the court to relieve a plaintiff of the
9 consequences...even if there is no good cause shown.” *See* Fed. R. Civ. Proc. 4(m),
10 Advisory Comm. Notes (1993).

11 NEXA has worked diligently to serve Defendants Wilton A. Person (“Person”)¹ and
12 SMC. Person was served on February 7, 2023. NEXA first attempted to serve SMC at the
13 Arizona address identified on the Arizona Corporation Commission website for the
14 statutory agent of SMC, Owen Weddell (“Weddell”): 7137 E. Rancho Vista Drive Suite
15 B05, Scottsdale, AZ 85251. *See* 1/27/2023 Affidavit of Attempted Service, attached as
16 **Exhibit A** (declaring service was attempted at this address on 1/11/2023, 1/13/2023,
17 1/16/2023, 1/18/2023, and 1/19/2023). The process server notes state that this address
18 appeared to be for another company called “Arizona Mortgage RI” and no statutory agent
19 was present. *Id.*

20 NEXA then attempted service on Weddell at the Arizona address listed as an office
21 location on SMC’s website: 4200 N Miller Rd #526, Scottsdale, AZ 85251. *See*

22
23
24
25
26
27
28

¹ Person was served on February 7, 2023.

1 <https://www.smartmortgagecentersinc.com/owen> (last accessed March 15, 2023). This
2 attempt was unsuccessful, and the process server noted that this address is a retirement home
3 and was told by staff that Weddell is not a current tenant. *See* 1/27/2023 Affidavit of
4 Attempted Service, **Exhibit A**. The process server called and spoke with Weddell, who
5 stated he is currently living in Illinois and provided Smart Mortgage's corporate
6 headquarters address to the process server: 16151 S. Lincoln Highway, Plainfield, Illinois
7 60586. *Id.*

8
9
10 NEXA therefore attempted to serve SMC at its corporate headquarters address of
11 16151 S. Lincoln Highway, Plainfield, Illinois 60586. *See* 2/16/2023 Affidavit of
12 Attempted Service, attached as Exhibit B (declaring service was attempted at this address
13 on 2/1/2023, 2/3/2023, 2/7/2023, and 2/14/2023). The process server noted that the door
14 was locked, no one answered the door or office phone line, and there were no employees
15 nor cars in the parking lot. *Id.* When the first attempt was made on February 1, an individual
16 identifying themselves as "Kelly" answered the Ring Doorbell, stated that Weddell "was
17 not around to accept the documents today" and suggested the process server come back on
18 February 3 at 12:00pm to meet Weddell. *Id.* On February 3, and on three separate dates
19 thereafter at different times of day, no one answered the door or appeared to be at the office,
20 the door was locked, and there were no cars in the parking lot. *Id.*

21
22
23 NEXA then attempted to serve SMC through its registered agent in Illinois, Richard
24 Birk ("Birk"), at the residential address listed for Birk as registered agent on the Illinois
25 Secretary of State website. Service was attempted a total of seven times with two different
26 process server companies, without success. *See* 3/9/2023 Certificate of Non-Service
27
28

1 (declaring service was attempted at this address 2/23/2023, 2/26/2023, 03/01/2023,
2 03/04/2023, and 03/08/2023), attached as **Exhibit C**; *see also* Job Status Sheet for Job #
3 8511285, attached as **Exhibit D** (declaring service was attempted at this address 3/8/2023,
4 3/9/2023, 3/11/2023, 3/12/2023, and 3/14/2023).

6 Pursuant to 805 ILCS § 5/5.25, NEXA is serving SMC through the Illinois Secretary
7 of State, as the authorized agent thereunder to accept service for a corporation authorized
8 to transact business in Illinois when the “corporation’s registered agent cannot with
9 reasonable diligence be found at the registered office in this State[.]” 805 ILCS §
10 5/5.25(b)(2). NEXA sent the required documents, including the removal papers and this
11 Court’s Preliminary Order [Dkt. 5] on March 13, 2023, and received notification that the
12 documents arrived on March 14, 2023. The clerk for the Illinois Secretary of State’s office
13 advised that it may take up to 10 days for the Secretary of State to process the filing and
14 send back confirmation. After such confirmation is received, NEXA will then need to send
15 the confirmation and service package to SMC via certified or registered mail at the last
16 registered office shown on the Illinois Secretary of State website: 16151 S. Lincoln
17 Highway, Plainfield, Illinois 60586. 805 ILCS § 5/5.25(c)(2). NEXA will promptly serve
18 SMC as soon as it receives confirmation from the Illinois Secretary of State and anticipates
19 service will be accomplished within thirty (30) days.

23 This Court has the discretion to grant this request for an extension of time in order
24 to serve SMC. NEXA has made good faith attempts to serve SMC and has been unable to
25 effect service due to what the circumstances of the service attempts suggest to be SMC’s
26 concerted efforts to avoid service.
27
28

1 For the foregoing reasons, NEXA moves this Court for an Order allowing it an
2 additional thirty (30) days in which to serve the Complaint on SMC, until April 20, 2023.

3
4 DATED March 15, 2023.

5
6 BARRETT & MATURA, P.C.

7 By: /s/ Jeffrey C. Matura
8 Jeffrey C. Matura
9 John J. Daller
8925 East Pima Center Parkway
10 Suite 215
Scottsdale, Arizona 85258
11 Attorneys for Plaintiff NEXA
Mortgage, LLC

12
13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on March 15, 2023, I electronically transmitted the
15 foregoing document to the Clerk's Office using the CM/ECF system for filing and
16 electronically mailed copies to the following parties:

17 Donald Wilson Jr.
18 Brian Holohan
Broenig Oberg Woods & Wilson
19 2800 North Central Avenue, Suite 1600
Phoenix, Arizona 85004
20 dwj@bowwlaw.com
bh@bowwlaw.com

21 *Attorneys for Defendant Wilton Person*

22
23
24 /s/ Holly A. McGee
Holly A. McGee
25
26
27
28